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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 AMERICAN CREW, INC., TARGET  
15 CORPORATION,

16 Defendants.

Case No.: CGC-20-585325

**[PROPOSED] CONSENT  
JUDGMENT**

Judge: Ethan P. Schulman  
Dept.: 302  
Hearing Date: June 30, 2021  
Hearing Time: 9:30 AM  
Reservation #:

1           **1. INTRODUCTION**

2           1.1     **The Parties.** This Consent Judgment is entered into by and between Anthony  
3           Ferreiro (“Ferreiro”), Ema Bell (“Bell”) (collectively, “Plaintiffs”) and Revlon, Inc. (“Revlon” or  
4           “Defendant”) with Plaintiffs and Defendant collectively referred to as the “Parties” and each of  
5           them as a “Party.” Plaintiffs are individuals residing in California that seek to promote awareness  
6           of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous  
7           substances contained in consumer products. Revlon is alleged to be a person in the course of doing  
8           business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9           1.2     **Allegations and Representations.** Plaintiffs allege that Defendant has exposed  
10          individuals to diethanolamine (DEA) from its sales of cosmetics (defined herein) without providing  
11          a clear and reasonable exposure warning pursuant to Proposition 65. DEA is listed under  
12          Proposition 65 as a chemical known to the State of California to cause cancer.

13          1.3     **Notices of Violation/Complaints.**

14                 1.3.1    On July 18, 2019, Ferreiro served American Crew, Inc. (“American Crew”),  
15                 Target Brands, Inc., Target Corporation (collectively, “Target”), and various public enforcement  
16                 agencies with documents each entitled “Notice of Violation of California Health & Safety Code §  
17                 25249.6, et seq.” (the “Ferreiro Notice”) alleging that American Crew and Target violated  
18                 Proposition 65 for failing to warn consumers and customers that use of American Crew cosmetics  
19                 expose users in California to DEA.

20                 1.3.2    No public enforcer has brought and is diligently prosecuting the claims  
21                 alleged in the Ferreiro Notice. On July 8, 2020, Ferreiro filed a complaint (the “Complaint”) in the  
22                 matter to prosecute claims alleged in the Ferreiro Notice.

23                 1.3.3    On October 15, 2020, Bell served Revlon Consumer Products Corporation,  
24                 Revlon, Inc. (collectively, and together with American Crew, “Revlon”), Almay, Inc. (“Almay”),  
25                 Ulta Salon, Cosmetics & Fragrances, Inc., Ulta Beauty, Inc. (collectively, “Ulta Beauty”), and  
26                 various public enforcement agencies with documents each entitled “Notice of Violation of  
27                 California Health & Safety Code § 25249.6, et seq.” (the “Bell Notice”) alleging that Revlon,  
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1 Almay and Ulta Beauty violated Proposition 65 for failing to warn consumers and customers that  
2 use of Revlon cosmetics (defined herein) including without limitation the Almay Multi-Benefit  
3 Mascara (“Almay Mascara”), expose users in California to DEA.

4 1.3.4 The Ferreiro Notice and Bell Notice shall be referred to collectively herein  
5 as, the “Notices.”

6 1.3.5 No public enforcer has brought and is diligently prosecuting the claims  
7 alleged in the Bell Notice. On February 12, 2021, Ferreiro filed an amended complaint (the  
8 “Amended Complaint”) in order to add Bell as plaintiff, and claims alleged in the Bell Notice to  
9 the litigation. The Complaint and Amended Complaint shall be referred to collectively herein as,  
10 the “Action.”

11 1.3.6 This settlement is entered into among the Parties as a global settlement of all  
12 claims brought by Plaintiffs in the Notices served on Revlon, American Crew, Target, Ulta Beauty  
13 and each of their affiliates and subsidiaries regarding alleged exposures to DEA from use of  
14 cosmetics (defined herein) supplied by Revlon or its affiliates.

15 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
16 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that  
17 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,  
18 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
19 of all claims which were or could have been raised in the Action based on the facts alleged therein  
20 and/or in the Notices.

21 1.5 Defendant denies the material allegations contained in the Notices and Action and  
22 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
23 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor  
24 shall compliance with this Consent Judgment constitute or be construed as an admission by  
25 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
26 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,  
27 responsibilities, and duties of Defendant under this Consent Judgment.  
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1           **2. DEFINITIONS**

2           2.1     **Covered Products.** The term “Covered Products” means “cosmetics as defined by  
3 California Health and Safety Code 109900 for use on hair and skin including but not limited to,  
4 Almay mascaras, that are manufactured, distributed and/or offered for sale in California by Revlon.

5           2.2     **Effective Date.** The term “Effective Date” means the date this Consent Judgment  
6 is entered as a Judgment of the Court.

7           **3. INJUNCTIVE RELIEF: WARNINGS**

8           3.1     **Reformulation of Covered Products.** As of the date this Consent Judgment is  
9 signed by both Parties, and continuing thereafter, Covered Products that Revlon directly  
10 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be DEA  
11 Free Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
12 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
13 “DEA Free Reformulated Product” is a Covered Product that complies with the standard set forth  
14 in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any  
15 Reformulated Product.

16           3.2     **DEA Free Reformulation Standard.** To qualify as a “DEA Free Reformulated  
17 Product” the Covered Product must meet the following standard: DEA content that is either (i) not  
18 detectable (i.e., zero) or below the Reporting Limit (defined herein) when measured in the Covered  
19 Product; or (ii) less than or equal to one-tenth of one percent (0.1%) in any triethanolamine-  
20 containing ingredient in the Covered Product, in each case when analyzed pursuant to liquid  
21 chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy  
22 (ICP-MS) or other method of analysis utilized by the International Organization for Standardization  
23 (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials. Defendant  
24 shall not increase the levels of TEA in its Almay Mascara subject to this Consent Judgment at any  
25 time following the Effective Date.

26           3.2.1   **Reporting Limit.** The “Reporting Limit” is the lowest concentration at  
27 which DEA can be detected in a sample of a Product by an accredited testing laboratory employing  
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1 LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative and quantitative  
2 screening of cosmetics and cosmetic raw materials.

3       **3.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing  
4 thereafter, Revlon must provide a clear and reasonable exposure warning as set forth in this §§ 3.3  
5 and 3.4 for all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers  
6 for sale in California that is not a DEA Free Reformulated Product. There shall be no obligation for  
7 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to  
8 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**  
9 described in §§ 3.3(a) or (b), respectively:

10       (a) **Warning.** The “Warning” shall consist of the statement:

11       ⚠ **WARNING:** This product can expose you to chemicals including  
12 diethanolamine (DEA), which is known to the State of California to cause cancer.  
13 For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

14       (b) **Alternative Warning:** Revlon may, but is not required to, use the alternative short-  
15 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

16       ⚠ **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

17       **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word  
18 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
19 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
20 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
21 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
22 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the  
23 Covered Product’s packaging or labeling, providing that the warning is displayed with such  
24 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
25 read and understood by an ordinary individual under customary conditions of purchase or use. A  
26 warning may be contained in the same section of the packaging, labeling, or instruction booklet  
27 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at  
28 least the same size as those other safety warnings.

1           If Revlon sells Covered Products via an internet website to customers located in California,  
2 the warning requirements of this section shall be satisfied if the foregoing warning appears either:  
3 (a) on the same web page on which Covered Products are displayed and/or described; (b) on the  
4 same page as the price for the Covered Products; or (c) on one or more web pages displayed to a  
5 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
6 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
7 immediately following the display, description, price, or checkout listing of the Covered Products,  
8 if the warning statement appears elsewhere on the same web page in a manner that clearly associates  
9 it with the product(s) to which the warning applies.

10           **3.5 Compliance with Warning Regulations.** The Parties agree that Defendant shall be  
11 deemed in compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this  
12 Consent Judgment or by complying with warning requirements adopted by the State of California’s  
13 Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

14 **4. MONETARY TERMS**

15           **4.1 Civil Penalty.** Revlon shall pay \$16,000.00 as a Civil Penalty pursuant to Health  
16 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
17 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
18 Civil Penalty remitted to Plaintiffs, as provided by California Health & Safety Code § 25249.12(d).

19           **4.1.1** Within ten (10) days of the Effective Date, Revlon shall issue two separate  
20 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$12,000.00; and to (b)  
21 “Brodsky & Smith, LLC in Trust for Ferreiro and Bell” in the amount of \$4,000.00. Payment  
22 owed to Plaintiffs pursuant to this Section shall be delivered to the following payment address:

23           Evan J. Smith, Esquire  
24           Brodsky & Smith, LLC  
25           Two Bala Plaza, Suite 805  
26           Bala Cynwyd, PA 19004

26 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
27 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

28           For United States Postal Service Delivery:

1 Mike Gyurics  
2 Fiscal Operations Branch Chief  
3 Office of Environmental Health Hazard Assessment  
4 P.O. Box 4010  
5 Sacramento, CA 95812-4010

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics  
8 Fiscal Operations Branch Chief  
9 Office of Environmental Health Hazard Assessment  
10 1001 I Street  
11 Sacramento, CA 95814

12 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address  
13 set forth above as proof of payment to OEHHA.

14 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Revlon shall pay  
15 \$63,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiffs'  
16 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Revlon  
17 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
18 interest, pursuant to Code of Civil Procedure § 1021.5.

19 **5. RELEASE OF ALL CLAIMS**

20 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiffs  
21 acting on their own behalf, and on behalf of the public interest, and Revlon, and its parents,  
22 subsidiaries, shareholders, affiliates and each of their members, directors, officers, managers,  
23 employees, representatives, agents, attorneys, divisions, subdivisions, and their predecessors,  
24 successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to  
25 whom they directly or indirectly distribute or sell Covered Products, including but not limited to  
26 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers  
27 (including, without limitation, the Target Corporation), franchisees, and cooperative members,  
28 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to DEA  
from Covered Products as set forth in the Notices, with respect to any Covered Products  
manufactured, distributed, or sold by Revlon prior to the Effective Date. It is the Parties' intention  
that this Consent Judgment shall have preclusive effect such that no other actions by private

1 enforcers, whether purporting to act in his, her, or its interests or the public interest shall be  
2 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was  
3 alleged in the Action, or that could have been brought pursuant to the Notices against Revlon and/or  
4 the Downstream Releasees of the Covered Products (“Proposition 65 Claims”). The Parties agree  
5 that compliance with the terms of this Consent Judgment constitutes compliance with Proposition  
6 65 as to the Covered Products.

7           5.2 In addition to the foregoing, Plaintiffs, on behalf of themselves, their past and  
8 current agents, representatives, attorneys, and successors and/or assignees, and *not* in their  
9 representative capacity, hereby waive all rights to institute or participate in, directly or indirectly,  
10 any form of legal action and releases Revlon, Defendant Releasees, and Downstream Releasees,  
11 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,  
12 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
13 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
14 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
15 from Covered Products manufactured, distributed, or sold by Revlon, Defendant Releasees or  
16 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
17 Plaintiffs specifically waive any and all rights and benefits they now have, or in the future may  
18 have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides  
19 as follows:

20           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
21 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
22 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
23 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
24 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
25 DEBTOR OR RELEASED PARTY.

26           5.3 Revlon waives any and all claims against Plaintiffs, their attorneys and other  
27 representatives, for any and all actions taken, or statements made (or those that could have been  
28 taken or made) by Plaintiffs and their attorneys and other representatives, whether in the course of  
investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
and/or with respect to Covered Products.



1           **6. INTEGRATION**

2           6.1     This Consent Judgment contains the sole and entire agreement of the Parties and all  
3 prior negotiations and understandings related hereto shall be deemed to have been merged within  
4 it. No representations or terms of agreement other than those contained herein exist or have been  
5 made by any Party with respect to the other Party or the subject matter hereof.

6           **7. GOVERNING LAW**

7           7.1     The terms of this Consent Judgment shall be governed by the laws of the State of  
8 California and apply within the State of California. If Proposition 65 is repealed or is otherwise  
9 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall  
10 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
11 that, Covered Products are so affected.

12           **8. NOTICES**

13           8.1     Unless specified herein, all correspondence and notices required to be provided  
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
15 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
16 by the other party at the following addresses:

17 For Defendant:

18           Alexandra Gerber  
19           SVP and Asst. General Counsel  
20           Revlon  
21           One New York Plaza  
22           New York, NY 10004

With a copy to:

23           William F. Tarantino  
24           Morrison & Foerster LLP  
25           425 Market Street  
26           San Francisco, CA 94105

27 For Plaintiffs:

28           Evan Smith  
            Brodsky & Smith, LLC  
            9595 Wilshire Blvd., Ste. 900  
            Beverly Hills, CA 90212

Any party, from time to time, may specify in writing to the other party a change of address to  
which all notices and other communications shall be sent.

1           **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2           9.1     This Consent Judgment may be executed in counterparts and by facsimile, each of  
3           which shall be deemed an original, and all of which, when taken together, shall constitute one and  
4           the same document.

5           **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
6           **APPROVAL**

7           10.1    Plaintiffs agree to comply with the requirements set forth in California Health &  
8           Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
9           Defendant agrees it shall support approval of such Motion.

10          10.2    This Consent Judgment shall not be effective until it is approved and entered by the  
11          Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
12          Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
13          days, the case shall proceed on its normal course.

14          10.3    If the Court approves this Consent Judgment and is reversed or vacated by an  
15          appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
16          Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
17          its normal course on the trial court's calendar.

18          **11. MODIFICATION**

19          11.1    This Consent Judgment may be modified only by further stipulation of the Parties  
20          and the approval of the Court or upon the granting of a motion brought to the Court by either Party.  
21          Notwithstanding the foregoing, if Plaintiffs, the Attorney General, or any public enforcer  
22          represented by Brodsky & Smith agree to terms in a settlement or judicially entered consent  
23          judgment with any manufacturer of Covered Products which permits a higher level of DEA in  
24          Covered Products without requiring an exposure warning, the Parties agree that Defendant shall be  
25          deemed in compliance with the terms of this Consent Judgment and Proposition 65 if it elects to  
26          adhere to such reformulation terms as provided in such other DEA settlement or judicially entered  
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consent judgment. The Parties agree to cooperation to modify the consent judgment to conform to the subsequently entered consent judgment at the other Party's request.

**12. ATTORNEY'S FEES**

12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

**13. RETENTION OF JURISDICTION**

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

**14. AUTHORIZATION**

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

**AGREED TO:**

**AGREED TO:**

Date: March 31, 21  
By: Anthony Ferreiro  
ANTHONY FERREIRO

Date: March 12, 2021  
By: Alexandra Gerber  
Alexandra Gerber *SVP Assistant GC*  
REVLON, INC.

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**AGREED TO:**

Date: 3/2/2021  
By:   
EMABELL

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_ Judge of Superior Court